

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA, LOCAL #59
(Akal Security, Inc.)

and

Case 14-CB-9147

CECIL WAYNE BROWN, An Individual

Lynette K. Zuch, Esq.,
of St. Louis, MO,
for the General Counsel.
Bruce C. Cohen, Esq.,
of Clayton, MO,
for the Respondent.

DECISION

Statement of the Case

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in St. Louis, Missouri on March 21, 2000. Subsequently, briefs were filed by the General Counsel and the Respondent. The proceeding is based upon a charge filed August 1999,¹ by Cecil Wayne Brown, an individual. The Regional Director's amended complaint dated January 14, 2000, alleges that Respondent, United Government Security Officers of America, Local #59 violated Section 8(b)(1)(A) and (2) of the Act by telling the Charging Party that he owed dues or service fees for the months of April through July 1999, without allowing for the 30-day contractual grace period; and asserting that if he did not pay, Respondent would notify the Employer that he was no longer in good standing which would result in a loss of seniority; (b) telling the Charging Party that he had lost his seniority because of provisions of the contract; (c) enforcing the provisions of the contract by advising the Charging Party that failure to pay regular monthly dues would result in a loss of bargaining unit membership and a loss of seniority; and that his seniority date was April 1, 1999; (d) telling an employee that the Charging Party lost his years of seniority for arbitrary reasons; (e) telling employees that failure to pay delinquent monthly dues and initiation fees would result in a break in seniority; (f) entering into, maintaining and enforcing a collective-bargaining agreement that bases the seniority standing of employees upon the date employees join, rejoin or transfer into the Union and are accepted or re-accepted into membership in Respondent; (g) applying the unlawful seniority provision to deny years of seniority to Charging Party Brown, and thereby causing and attempting to cause the Employer to discriminate against employees who are not members of Respondent by limiting the seniority rights of those employees; and (h) denying years of seniority to Linda Maloney and Troy Young and thereby causing and attempting to cause the Employer to discriminate against employees.

¹ All following dates will be in 1999 unless otherwise indicated.

Upon a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following:

Findings of Fact

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I. Jurisdiction

At all material times, Akal Security, Inc., a New Mexico corporation, has been engaged in providing security services to various institutions in the United States including the United States District Court for the Eastern District of Missouri, St. Louis, Missouri. During the past year the employer, in conducting its operations, provided security services to the United States valued in excess of \$50,000, in states other than New Mexico. Accordingly, the employer has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Local #59 is a labor organization within the meaning of Section 2(5) of the Act and I find that the circumstances meet the Board's jurisdictional standards and it effectuates the policy of the Act to exercise jurisdiction in a case of this nature.

II. The Alleged Unfair Labor Practices

On September 1, 1995, the Respondent Union was certified as the collective-bargaining representative of all full-time and regular part/shared-time court security officers (CSO) assigned to the federal courthouses within the jurisdiction of the United States District Court for the Eastern District of Missouri (St. Louis and Cape Girardeau), employed by General Security Services Corporation pursuant to its contracts with the United States Government to provide security at such courthouses. Lead court security officers (lead CSO) were excluded from the unit. The Cape Girardeau unit employees have not been represented by the Union since about July 1999.

The most recent contract between General Security Services Corporation (GSSC) and the Respondent was entered into in July 1998 and was effective from about July 13, 1998 through September 30, 1999. This contract excluded lead CSOs from coverage.

On April 1, 1999, Akal Security succeeded to the contract with the U.S. Marshals Service to provide security services to the Eastern District of Missouri. Akal hired its predecessor employees and initially abided by the terms of the GSSC contract for its bargaining unit employees.

On June 11, Akal and the Respondent Union entered into a contract, which is effective through September 30, 2003. This contract covers all CSOs, including leads CSOs.

Cecil Brown was hired as a CSO on July 10, 1990. In November 1995, after resigning his membership in the Union, Brown crossed a picket line established by the Union and transferred to a lead CSO position. Brown was employed as a lead CSO until April 1, when Akal became the contractor with the U.S. Marshals Service. Akal eliminated one of the three lead CSO positions and on April 2, Akal reassigned Brown to a CSO position and moved him from the Bankruptcy Court to the District Court. Effective April 5, Brown exercised his date of hire seniority and transferred back to the Bankruptcy Court.

On April 2, Lead CSO Linda Maloney prepared a new CSO seniority list. This list was posted in her office and the outer office at the District Court, at the Bankruptcy Court, and a copy was given to the Union. The list included all CSOs with their date of hire seniority. Brown appears as number 6 on this list with his July 10, 1990 date of hire as his seniority date.

On July 8, Union business agent Steve McClurkin telephoned Brown at the Bankruptcy Court and asked if Brown was interested in joining the Union. Brown responded, "Why are you asking me to rejoin the Union? Did you guys find out you couldn't, in fact, take my seniority?" McClurkin said, "No, I just want to make sure or try to get everybody back on the same page with a new contract. We will all be starting out from square one." Brown then said he would think about it.

On July 22, Local #59 vice president Jim Sheldon, accompanied by Lead CSO Troy Young, went to the Bankruptcy Court, when Sheldon gave Brown a letter dated July 22 from Local #59 president Mike Karl. The letter states, in part

. . . According to the Union's records, you have not made any payments since April 1, 1999, and currently owe \$153.84 including past dues or service fees for the months of April through July 1999. . .

. . . Unless you pay the above delinquent service fee amounts by 5:00 p.m. on July 26, 1999, the Union will notify AKAL that you are no longer in good standing which will result in a loss of seniority. . . .

Sheldon told Brown that he was behind in his union service fees that he also had lost his seniority, and that his seniority date would be April 1, Brown questioned the Union's right to take his seniority and said he had been a CSO since 1990, 6 years before Sheldon even started, and 5 years before there was any talk of a union. Sheldon then referred to the contract.² Brown wrote a check for the union service fees that the Union claimed he owed, gave Sheldon the check and said he would seek legal counsel. Sheldon returned the check to Brown and stated

² The Union's contract with GSSC, which served as the initial terms and conditions of employment for Akal's bargaining unit employees, provided in pertinent part at Article III – Seniority, Section 6:

Any bargaining unit employee who was transferred to a non-bargaining unit position prior to the effective date of this Agreement, and is later returned to the bargaining unit, shall be credited with all seniority as if he/she never left the bargaining unit. . . .

The Union's contract with Akal entered into on June 11, 1999 made certain changes including at Article 2 Seniority, Section 2.1 as follows:

For the purpose of this Agreement seniority shall be defined as the length of continuous service for bargaining unit members in good standing (including leaves of absence which are allowed under state, federal or local laws or which are otherwise authorized by the terms of this agreement) commencing on the date which the Employee was/is originally hired as a Court Security Officer for the Company including any predecessor or successor employer. New Employees, or any other non-bargaining unit Employees joining, rejoining or transferring into the Union will have their seniority start on the date they are accepted or re-accepted into the Local Union membership and will remain on the seniority list so long as they remain in good standing with the Union. Seniority shall be used in applying various aspects of this Agreement, including but not limited to filling new and/or vacant positions, bidding shifts, post-bidding, work location, work weeks, transfers, overtime hours, vacation scheduling, traveling, training, displacement, changing employment status from Time-share to Full-time and from Full-time to Time-share, leaves of absence, wages, benefits, and promotions. . .

Brown might want to speak with his attorney before making the payment. The following day Brown gave the check to Lead CSO Young, told Young to give the check to Local secretary-treasurer Don Murphy, and explained that he did not have a problem with paying the service fees, rather his complaint was over his loss of seniority.

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By letter dated July 25, local president Karl acknowledged receipt of Brown's check and payment of Brown's service fees for April through July 1999 and further stated:

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. . . Failure to pay regular monthly dues will result in a loss of Bargaining Unit Membership to include a loss of any seniority.

. . . Your seniority date is 04-01-99.

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Brown thereafter continued to pay monthly service fees, however, as a result of Brown's seniority date being changed from 1990 to April 1, 1999, effective August 1, Brown was transferred back to District Court, taken off his Monday through Friday work schedule with hours from 7 a.m. to 4:30 p.m., and assigned a weekend schedule that included working from 7 a.m. to 3:30 p.m. on Saturday and Sunday and from 8:30 a.m. to 5 p.m. on Monday, Tuesday and Wednesday. CSO Steven McClurkin, the business agent, and Tom Boyd, a time-share CSO and negotiating committeeman exercised their date of hire seniority to replace Brown at the Bankruptcy Court.

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In late July or early August, while the April 2 seniority list still was posted, local president Karl told Lead CSO Maloney that he wanted an updated seniority list that reflected all of the CSOs and their seniority dates, with Brown at the bottom of the list. Karl said that Brown had left the Union and had never re-entered the Union, so he wanted Brown's name at the bottom of the list. Karl did not say where Lead CSOs Maloney and Young should appear on the seniority list. Within a week of that conversation, Lead CSO Maloney asked Local secretary-treasurer Murphy why the Union was denying Brown his seniority. Murphy replied that it had nothing to do with Brown's actions with the Union, but with something else, a personal matter. Maloney asked what he meant by it being personal, but Murphy did not respond.

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On August 4, Maloney issued a new seniority list which placed Brown as number 16 at the bottom of the list but with his July 10, 1990 date of hire as his seniority date. Lead CSOs Maloney and Young appear on the list as numbers 3 and 7, respectively, with their date of hire as their seniority date. The following union representatives appear on the full-time CSO list ahead of Brown, although each has a hire date later than Brown: 8. International vice president Nick Gramc, 4/27/92; 9. Shop steward Bill Wells, 4/28/92; 10. Business agent and negotiating committeeman Steve McClurkin, 2/1/95; 11. Negotiating committeeman Eugene Bohlen, 3/20/95; 14. President Mike Karl, 7/24/96; and 15. Vice president Jim Sheldon, 9/3/96.

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In early to mid-August, after Maloney issued the August 4 seniority list, president Karl came to her office and said he wanted a new seniority list with Brown at the bottom of the list with an April 1 seniority date. Maloney explained she had just put the seniority list out, and she would have to contact Akal for further direction. Karl said that the list was wrong, that it was incorrect. Karl did not comment on the location of Maloney and Young on the list, who had become members of the Union in August and appear in order of their date of hire.

On August 25, International vice president Nick Gramc and shop steward Bill Wells filed a grievance over Akal's failure to post a current seniority list. Attached to this grievance was a copy of the August 4 seniority list and Section 2.2E of the contract, which states, "An

Employee's standing on the posted seniority list shall be final, unless protested in writing to the Lead Court Security Officer no later than thirty (30) working days after the list has been posted."

On September 7, lead CSO Maloney prepared a new seniority list, which showed all CSOs with their date of hire seniority, with Brown as number 14 at the bottom of the full-time CSO list. Maloney and Young appeared on a new list of lead CSOs. On September 14, Maloney prepared a new seniority list, which again placed Brown at the bottom of the full-time CSO seniority list and Maloney and Young on the lead CSO seniority list. On these lists, however, Brown, Maloney and Young each have an April 1 seniority date.

On October 14, president Karl settled the grievance filed by international vice president Gramc by stating, "... the seniority list dated 10-14-99 and which is attached will correct the violations, when posted." The September 14 seniority list, not the referenced October 14 list, was attached. An October 14 seniority list issued reflects the transfer of CSOs David Durney and Charles Thompson from time-share to full-time CSOs occasioned by international vice president Gramc's transfer to Denver to work out of the Union's International office and the retirement of CSO Skip Rule. Brown's April 1 seniority was unchanged and he remained at the bottom of the full-time CSO list. Similarly, Maloney and Young remained on the lead CSO list with an April 1 seniority date.

During mid-to-late September, Maloney told Gramc that she was not pleased with the April 1 seniority date, and asked why the Union was doing this. Gramc replied that she and Young would get their seniority back, and he would give them a written document stating so. Maloney asked if Local president Karl would agree. Gramc said that Karl had already agreed to it and there would be no problem with getting their seniority back.

In an October telephone conversation, after Gramc had gone to Denver, Gramc told Maloney that he and Akal had reached agreement on her and Young's seniority. By letters dated October 25, signed by Gramc and Akal director of human resources Ruby Khalsa, Maloney and Young were advised that "Due to the fact that you were not afforded the opportunity to join the Union Local #59 at its inception, UGSOA and AKAL Security had agreed to recognize your original date of hire. . ."

A complaint was issued in this proceeding on October 29, alleging that Respondent unlawfully denied years of seniority to Charging Party Brown. Shortly thereafter, by letter dated November 2, international president Vissar advised Akal that the October 25 letter regarding the seniority of Maloney and Young was "null and void."

Sometime in December, the Respondent Union, gave all employees a form letter that would be used to notify them of dues that were more than 30 days behind. This form stated:

. . . Unless you pay the above delinquent monthly dues and initiation fee amounts within seven (7) days of the date of this letter, the union will notify AKAL that you are no longer in good standing which will result in a break in your seniority.

DISCUSSION

The Respondent argues that the seniority provisions of Article 2 Seniority as maintained and administered by Respondent do not violate Sections 8(b)(1)(A) or 8(b)(2) of the Act, however, it admits that it inadvertently failed to give Charging Party Brown his 30 day grace period, and is ready to make him whole for that loss.

It also contends that nothing in the operation or administration of Article 2 Seniority in any manner imposes any obligations, limitations, or sanctions on Maloney or Young or CSO leads (except for the possibility of removal from the Seniority Lists for failure to remain in good standing), and that the maintenance and enforcement of Article 2 Seniority in no manner violates Section 8(b)(2) of the Act.

In view of the Respondent's admission I find, without further discussion, that the Respondent failed to allow for the contractual 30-day grace period and threatened the loss of seniority for failure to pay service fees in violation of Section 8(b)(1)(A) of the Act, as alleged.

The principal issue in this proceeding revolves around the assignment of a proper seniority to Brown after Akal Security succeeded to the contract with the Government formerly held by GSSC, hired all its employees but reduced the number of lead CSO from 3 to 2 (while also making the formerly non bargaining unit lead CSO position a bargaining unit position) thereby making Brown a CSO, a position he held for 5 years prior to November 1995 his resigned from the Union, crossing a Union picket line, and transfer to a lead CSO position.

This case is about both the lawfulness of certain contractual clauses and about the Unions utilization and rationalization of how the clause would and could be implemented in reaction to Brown's return to a CSO position, prior to and after the negotiation of and effective date of a contract containing the new clause.

The policy of the Act in general is to insulate job benefits (which often are related to job seniority), from union activities and discrimination which has the effect of encouraging employees to join or maintain union membership and is not condoned, see *Radio Officers' Union v. NLRB*, 347 U.S. 17 (1954).

In order to avoid discriminatory conduct which violates the Act, a union cannot use membership considerations (including a employee's status as a service fee member) to determine seniority and the attendant conditions of employment and in order to avoid discriminatory conduct (and to satisfy the duty of fair representation), when taking actions affecting unit employees' employment status, a union must act on the basis of relevant considerations, and not on considerations that are "arbitrary, discriminatory, or in bad faith." See *Reading Authracie Co.*, 326 NLRB No. 143 (1998).

Here, the uncontroverted evidence shows that on July 22, vice president Sheldon told Brown that he was behind in his union service fees, that Brown had lost his seniority due to the seniority provisions in the contract between the Union and Akal and that his new seniority date would be April 1.

Business agent McClurkin also admitted that he encouraged Brown to join the Union under the old contract and prior to a new contract and asserted that if Brown did, he would have all of his seniority. McClurkin admitted that it was Respondent's position that if Brown had joined the Union before the Union and Akal entered into a contract, Brown would have his date of hire as his seniority date. McClurkin further admitted that if Brown joined the Union or became an agency member after the Union and Akal contract was entered into, Brown would have an April 1 seniority date.

Despite its initial position regarding its (conditional), willingness to accept Brown's initial July 10, 1990, date of hire as his seniority date the Union enforced the provisions of the new collective-bargaining agreement by advising Brown that on July 26 failure to pay regularly monthly dues would result in a loss of bargaining unit membership and a loss of seniority; and

stated that his seniority date was April 1. As noted above, the Union thereafter took other actions designed to assure that Brown was afforded no higher place on any seniority list than one based upon the new April 1, 1999 date. Lead CSO Maloney also testified that during this period, in late July or early August, she had a conversation with Union secretary-treasurer Don
 5 Murphy in which she questioned why the Union was denying Brown his seniority. Murphy, (who was not called to testify), told Maloney that it didn't have anything to do with Brown's actions with the Union and asserted that it was something else, something personal.

Lead CSOs Maloney and Young also were excluded from the unit under the Union's old
 10 contract but are included in the unit under the new contract between Akal and the Union. Accordingly, Maloney and Young became members of the Union in August. They initially appeared on the August 4 seniority list with their date of hire as their seniority date, however, they appeared on the September 14 and October 14 seniority list with an April 1 seniority date. In contrast to the Union's evolving position on Brown's seniority. By letter dated October 25, the
 15 International Union advised Maloney and Young that the International and Akal agreed to recognize their original dates of hire as their seniority dates because they were never afforded the opportunity to join the Union at its inception. Shortly after the original complaint in this case issued on October 29, by letter dated November 2, international president Vissar, rescinded the October 25 agreement.

20 The Respondent asserts that Maloney and Young now cannot bridge their seniority under the contract because they never were unit employees during or before the collective bargaining agreement with the predecessor employer and therefore only are entitled to an April 1 seniority date. On brief, the Respondent fails to recognize or explain the Union willingness,
 25 prior to Brown's original filing of a complaint with the Board, to recognize (regardless of the now asserted contract language) both Maloney's and Young's original date of hire as their seniority dates.

Under the circumstances, I infer that the intervening filing of a complaint on Brown's
 30 related matter was the trigger for the Union's prompt and sudden decision to revoke it liberal exercise of discretion in regards to their seniority dates. Clearly, in late summer the Union was willing to treat Maloney and Young differently than Brown even though they each had much in the way of common background and I conclude that this position constitutes a showing of disparate treatment regardless of its reactionary attempt change its position because of Brown's
 35 complaint to the Board.

The Union caused a change Maloney's and Young's seniority date back to April 1, 1999 and it appears that it was motivated by its animosity against Brown because of his status as a non union service fee membership employee. The asserted personal basis for the animosity by
 40 Union officials does not act to relieve the Union of responsibility for the conduct of its agents and it otherwise appears that the real reason for the Union's actions were discriminatorily based upon Brown's non-union, service fee membership status. In the same vein the Union's conduct regarding Maloney's and Young's also is discriminatory and fails to recognize a date of hire seniority basis because of their lack of prior Union membership (before the apparent accretion
 45 of their positions into the bargaining unit). In this connection, it is noted that nothing was developed on the record to show how or why the new contract seniority language was negotiated and agreed upon. In any event, the result was inconsistent with the Union's duty to represent all unit employees in a fair and non-discriminatory manner.

Here, Brown's bottom position on the seniority list was established at the Union's insistence, it is based upon union membership considerations and it is therefore unlawful, see the *Reading Anthracite* case, *supra*. Accordingly, the Respondent's various other actions which

flow from this primary act, as set forth and alleged in the complaint, are similarly flawed and discriminatory. These actions essentially encourage employees to join the Union as a prerequisite to obtaining seniority, and on their face discriminated against employees who are not or were not members of the Union, in violation of Section 8(b)(2) of the Act, see also *Mine Workers Local 17*, 315 NLRB 1052, 1062, 1064 (1994), enfd. 85 F.3d 816 (4th Cir. 1996).

The Union's July letter to Brown enforced the provisions of the newly negotiated collective-bargaining agreement by advising Brown that failure to pay regular monthly dues would result in a loss of bargaining unit membership and a loss of seniority. It also changed his seniority date to April 1 and Respondent thereby restrained and coerced Brown by threatening him with loss of seniority, see *Bartenders Local 332*, 259 NLRB 252 (1981) in violation of Section 8(b)(1)(A) of the Act as alleged.

The Respondent's form letter given to all employees in December 1999, advised that failure to pay delinquent monthly dues and initiation fees would result in a break in seniority. This statement therefore threatens employees with something other than discharge and, in effect, it restrained and coerced employees by threatening them with loss of seniority for failure to pay delinquent dues and fees in violations of Section 8(b)(1)(A) of the Act as alleged.

The Respondent and Akal entered into, and have since maintained and enforced, a collective-bargaining agreement which in Article 2 Seniority, Section 2.1, bases the seniority standing of employees upon the date employees join, rejoin or transfer into the Union and are accepted or re-accepted into membership in the Union. Accordingly, Respondent has unlawfully encouraged employees to join the Union as a prerequisite to obtaining or retaining seniority, and it thereby discriminates against employees who were not or are not members of the Union, in violation of Section 8(b)(2) of the Act, as alleged.

On July 22, vice president Sheldon told Brown that he lost his seniority according to the contract and since July 25, Respondent has applied the unlawful seniority described above to deny Brown almost 9 years of seniority. As a result of his seniority being changed Brown was reassigned from a weekday schedule at Bankruptcy Court to a weekend schedule at the District Court. This change is inconsistent with the initial terms and conditions of employment in effect when Brown returned to the unit (the terms of the contract the Union had with GSSC which provided that "Any bargaining unit employee who was transferred to a non-bargaining unit position prior to the effective date of this Agreement, and is later returned to the bargaining unit, shall be credited with all seniority as if he/she never left the bargaining unit.") Brown should have been accorded his date of hire as his seniority date consistent with the initial terms and conditions in effect at the time that Akal became the successor employer. See *Canteen Co.*, 317 NLRB 1052, 1054 (1995), enfd. 103 F.3d 1355 (7th Cir. 1997); and *Hilton's Environmental, Inc.*, 320 NLRB 437, 438 (1995).

Under these circumstances, I find that the Respondent caused and attempted to cause Akal to discriminate against employees, including Brown, who are not members of the Union by basing their seniority rights on membership in Respondent in violation of Section 8(b)(2) of the Act, as alleged, see *Reading Anthracite Co.*, supra; *Mine Workers Local 17*, supra.

As discussed above, the Respondent also caused and attempted to cause Akal to discriminate against employees Maloney and Young for discriminatory reasons, including failure to accord Maloney and Young seniority because of their lack of prior representation and union affiliation and I conclude that the General Counsel also has shown this to be a violation of Section 8(b)(2) of the Act, as alleged.

Conclusions of Law

1. Respondent, United Government Security Officers of America, Local #59 is a labor organization within the meaning of Section 2(5) of the Act.

2. Akal Security, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Respondent and the employer have a collective bargaining agreement and it will effectuate the purposes of the Act to assert jurisdiction herein.

4. By advising employee Cecil Brown that he owed dues during the contractual grace period, would loose seniority if he didn't pay and would have a seniority date starting April 1, 1999; by informing Brown that he had lost his years of seniority because of the provisions of the contract; by telling Brown that he lost his years of seniority arbitrarily because of a personal matter; and by advising employees that failure to pay monthly dues and initiation fees would result in a break in seniority, the Respondent Union has restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act thereby violating Section 8(b)(1)(A) of the Act.

5. By entering into and maintaining and enforcing a provision that bases seniority on union membership, Respondent had unlawfully encouraged employees to join the Union as a prerequisite to obtaining seniority, and discriminated against employees who are not members of the Union, in violation of Section 8(b)(2) of the Act.

6. By causing the employer to discriminate by denying years of seniority to an employee who is not a member of the Union or by denying years of seniority to other employees for arbitrary reasons, the Respondent has discriminatorily encouraged membership in violation of Section 8(b)(2) of the Act.

7. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Union has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom, to post appropriate notices, and to take certain affirmative actions designed to restore the status quo ante and to effectuate the policies of the Act. Specifically, having found that the Union unlawfully collected funds from Cecil Brown during the contractual grace period the Union will be ordered to refund such amount with interest as computed in *New Horizon for the Retarded*, 283 NLRB No. 181 (May 28, 1987).³

The Respondent also shall rescind its effort to limit the seniority dates of Cecil Brown, Linda Maloney and Troy Young and shall request that the employer recognize their seniority date as their respective dates of hire rather than dates related to union membership and shall request that the Employer issue an appropriate corrected seniority list.

³ Under *New Horizons*, interest is computed at the short-term federal rate for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. Section 6621. Interest accrued before 1 January 1987 (the effective date of the amendment) shall be computed as in *Florida Steel Corp.*, 231 NLRB 651 (1977).

Otherwise, it is not considered to be necessary that a broad order be issued.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10((c) of the Act, I hereby issue the following recommended⁴

Respondent, United Government Security Officers of America, Local #59 its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Encouraging membership in Local #59 or any other labor organization, by maintaining and enforcing agreements with employers that base the seniority standing of members upon the date of union membership (or the date of service fee status).

(b) Threatening or advising any employees that he then would lose seniority by failing to pay dues during the contractual grace period, would lose seniority because of the provisions of the contract or for arbitrary reasons and would receive a break in seniority if they failed to pay monthly dues and initiation fees.

(c) Entering into, maintaining and enforcing a contract provision that bases seniority on union membership and causing employers to discriminate by denying years of seniority for arbitrary and discriminatory reasons.

(d) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, notify Akal Security, Inc., that a new seniority list must be established based upon nondiscriminatory considerations (in this instance original date of hire), and that to the extent that the terms and conditions of employment of employees Cecil Brown, Linda Maloney and Troy Young may have been affected, restore their rights and privileges to those afforded as of a seniority date based on their original date of hire.

(b) Make Cecil Brown whole for any losses incurred as a result of the discrimination against them in the manner specified in the remedy section of the judge's Order.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Within 14 days of service by the Region, post at its Union offices within the jurisdiction of Local #59 and at the facilities utilized by employer Akal Security, Inc., in the United States District Courts for the Eastern District of Missouri, St. Louis, Missouri, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the employer has gone out of business, the Respondent shall duplicate and mail, and its own expense, a copy of the notice to the named discriminatee, and all current employees and former employees employed by the employer at any time since April 1999.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. June 7, 2000.

Richard H. Beddow, Jr.
Administrative Law Judge

⁵ If this Order is enforced by a Judgment of the United States of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT, encourage membership in United Government Security Officers of America, Local #59 or any other labor organization, by maintaining and enforcing agreements with employers that base the seniority standing of employees upon the date they became union members of Local #59.

WE WILL NOT, cause employer Akal Security, Inc., to reduce the seniority of their employees in order to conform to seniority standings based on when such employees became members of Local 59 or assumed service fee status.

WE WILL NOT, threaten or advise employees that they will loose seniority by failing to pay dues during the contractual grace period, will loose seniority because of the provisions of the contract or for arbitrary reasons and will receive a break in seniority if they failed to pay monthly dues and initiation fees.

WE WILL NOT enter into, maintain or enforce a contract provision with Akal Security, Inc. that bases seniority on union membership and causing employers to discriminate by denying years of seniority for arbitrary and discriminatory reasons.

WE WILL NOT, in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL, notify Akal Security, Inc. that a new seniority list must be established that reflects nondiscriminatory considerations and the past seniority dates based upon their dates of employment and to the extent that the terms and conditions of employment of employees Cecil Brown, Linda Maloney and Troy Young may have been affected, restore their rights and privileges to those afforded as of a seniority date based on their original date of hire.

WE WILL, make Cecil Brown whole for any losses incurred as a result of the discrimination against him in the manner specified in the section of the Administrative Law Judge's Decision entitled "The Remedy".

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UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA, LOCAL #59

(Employer)

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Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1222 Spruce Street, Room 8.302, Saint Louis, Missouri 63103-2829, Telephone 314-539-7779.

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